

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

Crl.MC.No. 4341 of 2003()

**LPC.4/2001 of ASSISTANT SESSIONS COURT, PAYYANNUR
CRIME NO.296/1995 OF PAZHAYANGADI POLICE STATION)**
.....

PETITIONER: ACCUSED NO.40

**K.T.P. IBRAHIMKUTTY S/O. MOHAMMED KUNHI,
K.T.P. HOUSE, P.O.VENGARA, VIA-PAZHAYANGADI.**

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENTS: COMPLAINANT

**STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM**

BY PUBLIC PROSECUTOR SRI. P.RAVINDRA BABU

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 26/07/2007, ALONG WITH CRL.MC. 4342/2003 THE COURT ON
THE SAME DAY PASSED THE FOLLOWING:**

J.B. KOSHY, J.

Crl.M.C. Nos. 4341 & 4342 of 2003

Dated this the 26th day of July, 2007

Order

Petitioners in these two cases were accused in Crime No.296 of 1995 of Pazhayangadi police station. In the F.I.R. (Annexure - I), police named 12 accused and also stated that apart from the above 12 accused, there were more than 100 persons jointly involved in the commission of the crime and members of an unlawful assembly. After investigation, 40 persons were charge-sheeted. Though names of the petitioners were not specifically mentioned in the F.I.R., they were included in the list of 40 accused persons. In Sessions Case, 24 out of the 40, faced trial. Since petitioners were outside Kerala for various purposes, their cases were split up. Cases of the petitioners were included in L.P.C. No.4 of 2001 on the file of the Assistant Sessions Court, Payyannur. They were

charge-sheeted for offences punishable under sections 143, 147, 148, 353 and 307 read with section 149 of the Indian Penal Code. The case of the prosecution is that on 6.11.1995 at about 7.30 p.m., a meeting of Indian National League (INL) was going on at a place called Muttam near the Juma-at Mosque. At that time, the above accused persons, who are the active members of the Indian Union Muslim League (IUML), due to their enmity towards the INL activists and in furtherance of their common object of disturbing the public meeting conducted by the INL party members at Muttom and also with the intention to cause hurt and do away with the policemen engaged in providing protection to the INL workers for conducting the meeting, formed themselves into an unlawful assembly armed with deadly weapons such as stones, etc. disturbed the public meeting conducted by the INL party members and hit CW2,

an INL party worker, with stone causing hurt to him. The accused have also caused obstruction to the police force led by CW1, S.I. of Police, from discharging their official duties. Some police constables were also injured.

2. In the case tried before the Sessions Court, it was found by the Sessions Court that none of the accused were identified. There, it was proved that there was a mass attack using stones on the INL party workers by more than 100 people and there was no light. Some of the witnesses stated that pelting of stones was from the compound of nearby mosque. But, some witnesses stated that it was from outside the mosque. No test identification was conducted and none of the accused were properly identified and there were material contradictions in the version of alleged eye witnesses. The very same witnesses and evidence is only cited against the

petitioners. If the accused cannot be identified, they cannot be identified at this distance of time. Therefore, according to the petitioners, there is no point in proceeding against them.

3. Merely because case was split up and some of the accused persons who faced trial were acquitted, these accused, who were absconding, will not get any special advantage. They are not above law. Still, as per the police records, they are absconding and that is why their case is in the L.P.C. Petitioner in Crl.M.C.No.4342 of 2003 earlier approached this court through the same advocate by filing Crl. M.C. No.1861 of 2003. It was dismissed by order dated 6th June, 2003 with the following observations by a single Judge of this court:

"..... Petitioner says that the proceedings in the above case have to be quashed for the reason

that under Annexure III judgment number of accused in the case were acquitted. The only fact that some of the accused who stood trial were acquitted is not a ground for quashing the proceedings against an accused who had absconded and whose presence could not be secured at the time of trial. I do not find any reason for quashing the proceedings. Petition is dismissed."

Some of the police officers were also injured. It is not proper to file a second CrI.M.C. by the same accused. Even after the above order, he did not come and surrender before the police or court. In these circumstances, proper case for the petitioners is to surrender before the court and apply for discharge or face trial, as the case may be. However, I make it clear that if the petitioners approach before the court and apply for bail, that shall be granted on such conditions the trial court deems fit. If they

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raise preliminary objection, that also should be heard. I am not expressing any opinion regarding the merits of the case.

CrI.M.Cs. are allowed to the limited extent as indicated above.

J.B.KOSHY
JUDGE

vaa

J.B. KOSHY, J.

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Dated:26th July, 2007